

Amend Sections 7655, 7657, 7658 and 7659.2 of, and add Article 2.5 (commencing with Section 7659.9) to, the Revenue and Taxation Code to incorporate provisions in Board-sponsored bills AB 2894 and AB 2898 due to be chaptered out by AB 2114 on January 1, 2002.

Source: Legislative Division

In the 2000 Legislative Session, the Board sponsored two bills with provisions that affect the Motor Vehicle Fuel License Tax Law. Among other things, Assembly Bill 2894 (Ch. 923) added Article 1.2 (commencing with Section 7659.9) to Chapter 5 of Part 2 of Division 2 of the Revenue and Taxation Code to require persons whose estimated tax liability averages \$20,000 or more per month to submit payment by electronic funds transfer (EFT) for certain Special Taxes accounts. The Board also sponsored AB 2898 (Ch. 1052) in the 2000 Legislative Session to enable the Board to establish criteria that would allow for a more efficient process to provide relief of penalty, by for example, eliminating the requisite written statement under penalty of perjury from the person seeking relief under the established criteria.

Operative January 1, 2002, AB 2114 (Ch. 1053, Stats. 2000) will conform the Motor Vehicle Fuel License Tax Law to the state Diesel Fuel Tax Law and Federal Fuel Tax Law by moving the collection point of the excise tax on gasoline from the first distribution level to the refinery or terminal rack level. On January 1, 2002, AB 2114 amends Sections 7655, 7657, 7658 and 7659.2, and repeals the EFT provisions in Chapter 5, thereby chaptering out the provisions of AB 2894 and AB 2898 as of January 1, 2002.

This proposal would simply incorporate the existing provisions contained in Board-sponsored bills AB 2894 and AB 2898 into the Motor Vehicle Fuel Law effective January 1, 2002 and ensure that those changes will not be chaptered out by the provisions of AB 2114 when it becomes operative on that date.

Section 7655 of the Revenue and Taxation Code is amended to read:

7655. (a) Any person who fails to pay the amount of tax shown to be due by his or her return on or before the last day of the month following the monthly period to which it relates shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(b) Any supplier who fails to file a return in accordance with the due date set forth in Section 7651, shall pay a penalty of 10 percent of the amount of the tax, exclusive of prepayments, with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the tax for which the return is required, exclusive of any prepayments, for any one return.

Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7654, 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, and 7713. ~~Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief.~~

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

Section 7658 of the Revenue and Taxation Code is amended to read:

7658. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 7655, 7656, 7659.9, 7661, and 7706. Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

Section 7659.2 of the Revenue and Taxation code is amended to read:

7659.2. Except in the case of a person required to remit amounts due in accordance with Article 1.2 (commencing with Section 7659.9), for purposes of Section 7659.1, Each prepayment shall be accompanied by a report of the amount of that prepayment in a form prescribed by the board and shall be filed with the board on or before the 15th day following each monthly period together with a remittance payable to the Controller of the amount due.

Article 2.5 (commencing with Section 7659.9) is added to Chapter 5 of Part 2 of Division 2 of the Revenue and Taxation Code to read:

Article 2.5. Payment by Electronic Funds Transfer

7659.9. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 7651) and Article 1.1 (commencing with Section 7659). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment incorrectly remitted.

(f) Except as provided by Sections 7659.5 and 7659.6, any person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 7660) or Article 2.5 (commencing with Section 7670), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to

Section 6591.5, from the date on which the tax or the amount of tax required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 7655.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 7659.5 and 7659.6 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

7659.91. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 7659.9. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

7659.92. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) "Fedwire transfer" means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 7659.9 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.